

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 1:24cr13-MPM-DAS

JEREMY BERNOLD WINSTON

ORDER TO PRODUCE REPRESENTATIVE SAMPLES OF DRUGS ALLEGED IN
COUNTS III AND IV OF THE INDICTMENT FOR RETESTING BY DEFENSE

This matter is before the Court on Defendant's Motion to have the Prosecution produce for qualitative retesting, by Defendant's expert, representative samples from the controlled substance exhibits in Counts III and IV of the Indictment. And upon of said consideration, the Court finds the motion well-taken.

IT IS HEREBY ORDERED AND DECREED, in accordance with Fed. R. Crim. P. 16(a)(1), that the Prosecution shall extract samples from:

- a) Chemical Analysis Report, Case Number: KZ-23-0012, LIMS Number 2023-SFL4-01299 and
- b) Chemical Analysis Report, Case Number: KZ-23-0012, LIMS Number 2023-SFL4-02539.

These drug specimens are currently stored at the DEA Southeast Laboratory in Miami, Florida. The amount to be extracted from each specimen is in the discretion of the Prosecution. The amount shall be sufficient to perform a qualitative analysis of the substance. This would include a purity testing.

IT IS FURTHER ORDERED that the Defense has identified Dr. Mahmoud ElSohly with ElSohly Laboratories of Oxford, Mississippi, as the Defendant's retained expert for purposes of retesting the two samples. Prosecution shall deliver, in a manner it deems appropriate for maintaining the integrity of the specimens, a representative sample of each exhibit identified above

to the Defense's expert. The physical and mailing address of ElSohly Laboratories is 5 Industrial Park Drive, Oxford, MS 38655. Dr. ElSohly shall possess and present in advance, as a prerequisite to the delivery of the exhibits, a current and valid DEA registration (DEA registration number RE0103680). (A copy of Dr. ElSohly's DEA registration card is attached to Defendant's motion).

IT IS FURTHER ORDERED that, upon delivery of the exhibits to ElSohly Laboratories, Dr. ElSohly shall sign and return by Registered Mail, Return Receipt Requested, all accompanying forms (including Form DEA-12, "Receipt for Cash or Other Items") indicating receipt of the sample. Dr. ElSohly shall conduct the identification and qualitative analysis of the two samples including any purity level testing. Dr. ElSohly shall provide the Government with a Declaration Under Penalty of Perjury pursuant to 28 U.S.C. § 1746. The Declaration will state the quantity of each exhibit consumed during analysis (if any) as well as the weight of each exhibit both received from and returned to the Prosecution. The Declaration shall be delivered to the Prosecution immediately upon completion of the analyses ordered herein; and

IT IS FURTHER ORDERED, that the Defendant shall comply with all discovery requirements as outlined in Fed. R. Crim. P. 16(b)(1).

IT IS FURTHER ORDERED that:

- 1) the analyses performed by ElSohly Laboratories may be observed by a law enforcement officer chosen by the Prosecutor, who reserves the right to videotape the analyses or any portion thereof.
- 2) ElSohly Laboratories is responsible for safeguarding the samples and preserving the chain of custody in a manner to faithfully protect its integrity.
- 3) ElSohly Laboratories is responsible for repackaging each internal sample into a heat-sealed evidentiary envelope. This heat-sealed container shall be placed into another

heat-sealed envelope. The packaging shall be secured in such a manner that tampering will be readily observable.

- 4) upon completion of any other reanalysis, ElSohly Laboratories shall return any residual substance and its original packaging to the originating DEA laboratory by secure method, not to include regular mail. The method can be secured by delivery services (i.e., bar code tracking systems) offered by the United States Postal Service (such as registered mail) or by a commercial carrier.
- 5) The reanalysis must be completed within ten (10) calendar days from the date of receipt of the samples. Return of any residual substance and its original packaging must occur within five (5) calendar days following completion of the reanalysis.
- 6) Any failure to follow the aforementioned procedures will render the reanalysis results scientifically unreliable, as those terms are used in the Federal Rules of Evidence or its state equivalent.
- 7) Any failure by the Defense to maintain the proper chain of custody will not render a) Case Number: KZ-23-0012, LIMS Number 2023-SFL4-01299 and b) Case Number: KZ-23-0012, LIMS Number 2023-SFL4-02539 inadmissible for this reason.

SO ORDERED, this the 19th day of July, 2024.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE